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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,644	08/28/2003	Martin A. Allen	NOR-1077	7459

7590 08/04/2005

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EXAMINER	
DEL SOLE, JOSEPH S	

ART UNIT	PAPER NUMBER
1722	

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/650,644	ALLEN ET AL.	
	Examiner	Art Unit	
	Joseph S. Del Sole	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) *14-17* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/28/04, 12/8/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-13, drawn to an apparatus, classified in class 425, subclass 72.2.

II. Claims 14-17, drawn to a method, classified in class 264, subclass 103.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case (2) the apparatus as claimed can be used to practice another and materially different process such as one in which the filaments were collected individually (monofilament packages) or in bundles rather than as a web.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Kevin Rooney on 18 July 2005 a provisional election was made with traverse to prosecute the invention of Group I – the apparatus, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-6, 9-11, 13-15 of copending Application No. 10/650,540 (as US2005/0046090A1).

Claims 1-3, 5-6, 9-11 and 13-15 of 10/650,540 teach the exact invention of claims 1-13 of the present application but merely teach additional limitations drawn to melt blower modifications. Therefore, each limitation of claims 1-3 of the present application is anticipated.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-3 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fabbricante et al (5,679,379) in view of Hartel et al (4,586,690).

Fabbricante et al teach a lamellar die apparatus for extruding a heated liquid into filaments and directing air at the filaments having a plurality of plates (Fig 3, #s 11 and 12) each having opposite side faces (Fig 3), at least two of the side faces confronting each other and having a liquid passage positioned therebetween for transferring the heated liquid, a heating element positioned within the plates; an extrusion die coupled with the plurality of plates and communicating with the liquid passage and the air passage for discharging the heated liquid as filaments (Fig 3); the liquid passages is formed by respective first and second recesses on different ones of said plates which abut one another and a plurality of heating elements between plates (col 1, lines 55-68).

Fabbricante et al fail to teach the side faces confronting each other and having a heating element passage and heating element therebetween due to recess on plates abutting one another.

Hartel et al teach heating plates with confronting faces having passages therebetween and heating elements positioned within the passages for the purpose of optimum control of heat transfer (col 1, line 65 - col 2, line 5).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention and heating elements used with Fabbricante's plates with plates having passages and heating elements therebetween as taught by Hartel et al because such an obvious alternate arrangement of plates and heating elements enables greater control of heat transfer (the heating elements are between adjacent plates instead of being inside each plate or inside alternating plates.

8. Claims 4-6 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fabbricante et al (5,679,379) in view of Hartel et al (4,586,690) and further in view of Soda et al (3,613,170).

Fabbricante et al and Hartel et al teach the apparatus as discussed above. Fabbricante et al further teach a plurality of distribution passages communicating with an elongate air outlet in the plates, the distribution passages communicating with the air passage (Figs 3 and 4, #13).

Fabbricante et al fail to teach passages widening from the inlet to the outlet.

Soda et al teaches material outlets (Fig 1, #11) being wider than inlets (fig 1, #s 17 and 18) for the purpose of distributing material to a slot that then feeds the material to a separate die outlet (Fig 1, #10).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Fabbricante et al with outlet slots such that the slots are wider than the inlets as taught by Soda et al because such slots enable the communication of the material with a separate, changeable die outlet.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the Examiner by telephone are unsuccessful, Mr. Duane Smith can be reached at (571) 272-1166. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

Joseph S. Del Sole
August 2, 2005